

BEFORE THE ALABAMA COURT OF THE JUDICIARY

FILED

IN THE MATTER OF:

STATE OF ALABAMA JUDICIAL INQUIRY COMMISSION

v.

THE HONORABLE TRACIE A. TODD
CIRCUIT JUDGE, BIRMINGHAM DIVISION,
CRIMINAL DIVISION, JEFFERSON COUNTY, ALABAMA

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AUG 10 2022

ALABAMA COURT OF THE JUDICIARY
Nathan P. Wilson
Secretary

* Case # 61

MOTION FOR 2-MONTH CONTINUANCE OF TRIAL

Comes now, Respondent, Judge Tracie A. Todd, (“Respondent”), by and through counsel, and hereby respectfully requests this Honorable Court to enter an order granting a continuance of the trial date. Judge Todd has had insufficient time to defend herself against the very serious charges, with potentially very serious consequences up to and including removal from office. This Court routinely allows judges 7 months to prepare for trial. Judge Todd has had less than 5, and her lead counsel has had only 3 months. The additional 2 months are seriously required, and she respectfully requests this brief, two-month continuance of the trial.

In support thereof, the undersigned states as follows:

1. The complaint in this case was filed on March 18, 2022.
2. Judge Todd sought counsel. She obtained local counsel on April 6, 2022. She subsequently obtained lead counsel, Mr. Ungvarsky, who moved for *pro hac vice* admission on April 19, 2022 and whose *pro hac vice* application was granted on May 10, 2022. The trial is only three months since Mr.

Ungvarsky was authorized to represent Judge Todd in this matter. More time is needed to prepare.

3. On May 19, 2022, the Court set trial for August 15 and 16, 2022.
4. The Court issued its scheduling order on June 23, 2022. There was little time to conduct and complete discovery prior to trial – less than 2 months.
5. In response to Judge Todd’s discovery request shortly after the scheduling order, the Commission took the full 30 days to provide discovery and provided massive amounts of discovery on the last day possible, July 26, 2022 – less than 1 week before the depositions and about 3 weeks before trial. Judge Todd has had limited time to digest, and investigate from, that discovery given the closeness in time to the trial date in which it was provided. For example, she has been unable to depose anyone based upon receipt of the discovery.
6. The Court ordered that depositions conclude by August 1, 2022, later extending the deadline to August 2, 2022. Depositions could not occur in July as a result of Mr. Ungvarsky’s pre-existing trial calendar, JIC counsel’s pre-existing conference schedule, and the unavailability of witnesses due to their own personal schedules and the impact of the World Games in Birmingham, Alabama, which ran from July 7-17, 2022 and effectively shut down the city where most deponents live and where the depositions would

occur.¹ And of course it practically awkward to hold depositions prior to the receipt of discovery.

7. During the two days of depositions, Judge Todd deposed 14 persons, filling fully the two days. There are many other persons that Judge Todd needs to depose to adequately defend herself against the Commission's charges.
8. Given the time constraints, Judge Todd was unable to depose fully half of the Commission's proposed trial witnesses. Specifically, Judge Todd was unable to depose the following persons who are on the JIC Witness List:
 - a. Judge Clyde E. Jones
 - b. Judge Teresa T. Pulliam
 - c. Judge Shanta' Owens
 - d. Deputy District Attorney Logan Flowers
 - e. Deputy District Attorney Amanda Wineman
 - f. Brittany Wilkes, Judicial Assistant for Judge French
 - g. Cetonia McCoy, Judicial Assistant for Judge Todd
 - h. Courtney Roberts, Court Reporter for Judge Todd
 - i. Robert Nelson, Bailiff for Judge Todd

¹ For example, in early June, Presiding Judge Streety indicted to counsel that he would participate in an interview, but then, upon follow-up, indicated that he was unavailable due to the impact of the World Games. Time therefore had to be used during depositions to question Judge Streety. Similarly, in the first week of June 2022, counsel met with Judge French, who stated that she would talk without counsel in a non-recorded meeting. When counsel followed-up, Judge French did not return emails. Therefore, time had to be used during depositions to question Judge French.

j. Custodians for the Administrative Office of Courts (“AOC”) and On-Line Information Services (“OLIS”).

9. Put another way, there was insufficient time for Judge Todd to depose 10 of the 20 proposed JIC witnesses. This was simply a result of time-constraint; not discovery or trial planning. And the taking of depositions lead to the identification of other witnesses. Information learned at deposition would also require the deposition of Jefferson County District Attorney Danny Carr, who, it was learned at deposition, met with Judge French with regard to Judge Todd’s docket and calendar shortly after Judge Todd’s return to the bench, without any notice to Judge Todd herself.

10. Even of those persons who were deposed, the time-limits for the certifications of their transcripts will not pass prior to the trial. Judge French, for example, stated that she wants to review the transcript of her deposition. She is allowed 30 days to review. The trial will have come and gone by then. This is another example of the pretrial posture of the case simply moving too quickly, with insufficient time to complete all that needs to be completed.

11. Additionally, Judge Todd did not have sufficient time to conduct her own, independent investigation. For example, given more time, she would interview and depose Judge Todd’s personal physician, other medical professionals who provided treatment to Judge Todd and her family members from December 2021 to March 2022, the judicial assistants of the

Jefferson County Criminal Division Circuit Court Judges, members of the public defender offices, members of the private criminal defense bar, and defendants/members of the community with a vested interest in relevant cases. The fact is that counsel have done their level best to investigate and prepare for trial, but they need more time.

12. Of the persons on Judge Todd's witness list other than Judge Todd subpoenaed for the trial, Judge Todd was only able to conduct depositions of 3 of them. There remain 6 witnesses who there was no time to depose – Judges William Bell and Katrina Ross, and defense attorneys Chris Burrell, Leroy Maxwell, Adam Danneman, and Melina Goldfarb.

13. The Commission implicitly recognizes the need for additional time by its suggestion that might have sought depositions of two public defender witnesses who counsel recently identified. And the Commission has objection to the admission of certain of Judge Todd's exhibits. Counsel had insufficient time to execute SDTs to obtain all of those exhibits, with certificates of authenticity – particularly medically related ones, where counsel used releases by Judge Todd to obtain the records to present at trial. For fully authenticated records, counsel needs additional time. Counsel is also seeking to identify medical professionals to call as direct or rebuttal/impeachment witnesses at trial.

14. The trial date was set without consulting as to counsels' availability. Mr. Ungvarsky already had set – and it remains having set – a criminal matter

in the Arlington County (Virginia) General District Court on August 16, 2022. Mr. Ungvarsky has inquired whether counsel's appearance can be waived in that case and was told that it cannot. This Court, and other Alabama courts, typically prioritize criminal cases over civil ones. The trial conflicts with an established criminal matter.

15. It is imprudent and inefficient to press forward with trial when there is a pending petition for mandamus before the Alabama Supreme Court, grounded in Judge Todd's contention that recusal of members of this Court is warranted. To hold a trial when the Supreme Court may decide – after the trial – that the members should have recused is an inefficient use of judicial resources – partially where there are many witnesses, including a large number of sitting judges and practicing attorneys.
16. Judge Todd has a family medical concern. Her 87-year-old grandmother is in an extreme health situation post-surgery in the ICU at a hospital in Birmingham – her second serious hospitalization since early June, being there now this second time for approximately a month. Judge Todd spends much of her time in the hospital with her grandmother.
17. Without knowing the bases of the motion to continue, the Commission has advised counsel that it opposes any continuance. This is unexpected as the Commission had time to investigate its Complaint and only submitted the Complaint when *it* was ready to prosecute the case. But that does not mean that the Respondent Judge has had time to defend against the Complaint.

And to be clear, the charges are serious, as are the possible penalties. If less serious, perhaps less preparation and time would be needed. But this case requires time and preparation.

18. The time from Complaint to Trial is just under 5 months (March 16, 2022 to August 15, 2022). This is a relatively short period of time for a judge to prepare for a trial defense, as this Court regularly provides for 7 months of time to prepare for the trial. For example, in COJ 60, the time between Complaint and Trial was 1 week shy of 7 months (May 14, 2021 to December 7, 2021). In COJ 59, the time between Complaint and Trial was from April 6, 2021 to November 21, 2021, or 7½ months. In COJ 57, the time between Complaint and Trial was (March 3, 2021 to September 29, 2021) – again just shy of 7 months. In short, this Court’s practice is to provide approximately 7 months between Complaint and Trial. Judge Todd has had less than 5 months. The difference between 7 months and 5 months is significant – it is 29% less time to prepare – time that Judge Todd needs.
19. It is also notable that this Court grants continuances for judges to prepare for trial. Continuances were granted, for example, in COJ 57 and COJ 58.
20. The Respondent, Judge Todd, respectfully requests a continuance of approximately two months. Judge Todd does not anticipate seeking any further continuances.
21. The Commission will not be prejudiced by a short continuance. No witnesses of the Commission will become unavailable. No evidence of the

Commission will eviscerate. The only disfavor to the Commission is that Judge Todd will have more time to adequately prepare to defend herself against the allegations. That is a lawful basis for a continuance, not prejudice against one.

WHEREFORE PREMISES CONSIDERED, Judge Tracie A. Todd respectfully requests that the Court enter an Order continuing this trial by approximately two months, along with such additional and further relief the Court deems just and proper.²

Respectfully submitted,

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²Counsel for Judge Todd further suggest that the Court set aside 3 days for the trial, as, given the witnesses and evidence, it appears unlikely to conclude in the two days as currently scheduled.

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CERTIFICATE OF SERVICE

I hereby certify that we have on this 10th day of August, 2022 electronically filed the foregoing with the Court of the Judiciary, and that I have further served a copy by sending the same via email, and properly addressed as follows:

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